

WIPO Arbitration and Mediation

The Services of the WIPO Arbitration and Mediation Center

WIPO-MOST Training Course
Geneva November 11, 2003

Ignacio de Castro
WIPO Arbitration and Mediation Center



WIPO Arbitration and Mediation Center

- | Established in 1995 as part of the International bureau of the World Intellectual Property Organization (WIPO)
- | Purpose: to promote the resolution of IP/IT disputes through arbitration and mediation

WIPO Center Experience Domain Names

·Leading provider of domain name dispute resolution services

	UDRP	.info Sunrise	.biz STOP	.name ERDRP	Total
1999	1	-	-		1
2000	1,857	-	-		1,857
2001	1,556	1,579	53		3,188
2002	1,208	13,593	285	1	15,087
					20,133

·Index: <http://arbiter.wipo.int/domains/search/index.html>

WIPO Center Experience: Mediation and Arbitration

- | Growing caseload
- | Varied subject matter

Mediation and Arbitration

- | Appropriate for most IP/IT disputes
- | Enhances party control / autonomy
- | Time / cost-effective
- | Often less adversarial than court litigation

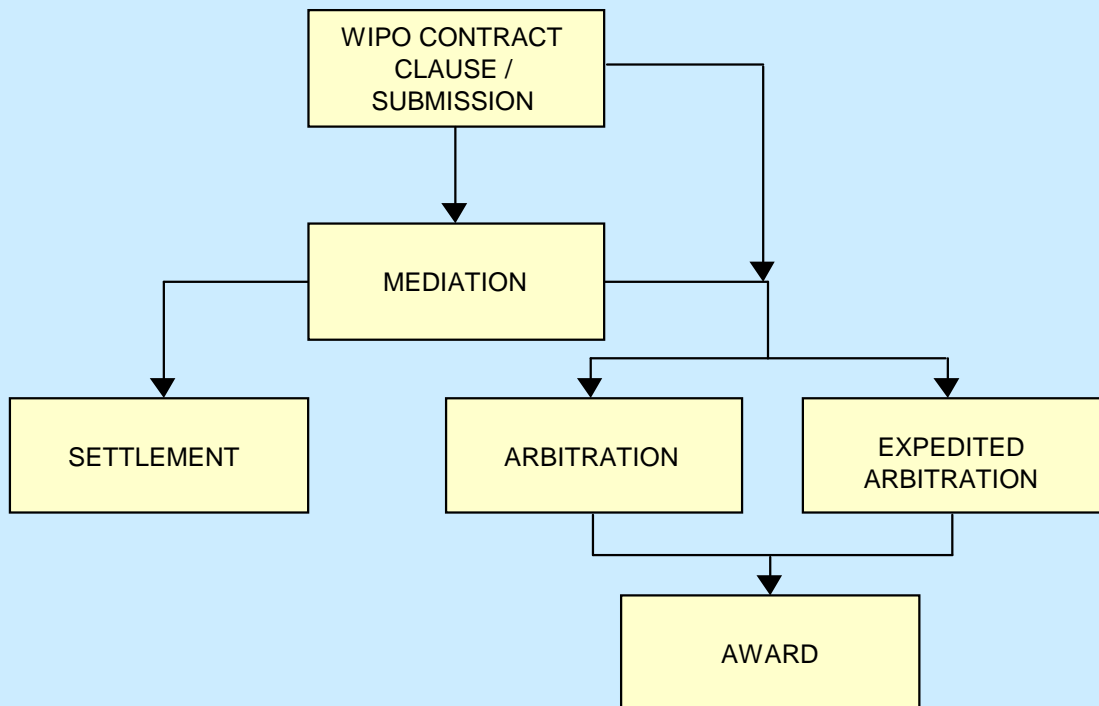
Neutrality

- International disputes: avoid “home court advantage” through choice of:
 - ▶ arbitrator / mediator
 - ▶ language
 - ▶ law
 - ▶ venue

Enforceability

- | Arbitration: New York Convention
 - ▶ with limited exceptions, “automatic” enforcement of arbitral awards
 - ▶ more than 130 signatories
- | Mediation: Settlement enforceable under contract law

Options



WIPO Rules, Clauses and Submission Agreements

- | Mediation
- | Arbitration
- | Expedited Arbitration
- | Mediation followed by arbitration
- | Available at <http://arbitr.wipo.int>

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [London] The language to be used in the mediation shall be [English] "



If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators] [a sole arbitrator]. The place of arbitration shall be [London] The language to be used in the arbitral proceedings shall be [English]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [English] law."

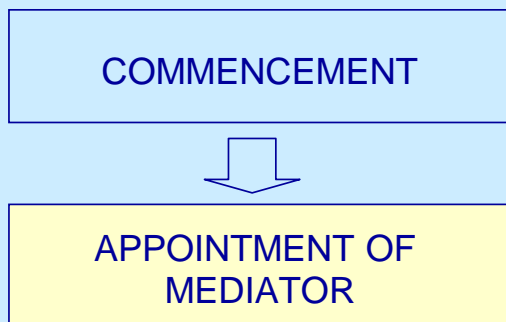
Mediation: Minimal Risk, Significant Benefits

- | Non-binding / party control
- | Confidential
- | Low cost
- | Based on interests of the parties
 - ▶ Value creation
- | In intellectual property disputes

The Mediation process



Commencement and Appointment of the Mediator




- | Request for mediation
 - ▶ Mechanics - Arts. 3-5
 - ▶ Administration fee - Art. 21

- | Appointment of the mediator
 - ▶ Importance - Art. 13
 - ▶ Procedure - Art 6

WIPO List of Neutrals

ORGANISATION MONDIALE
DE LA PROPRIÉTÉ INTELLECTUELLE

Centre d'arbitrage et de médiation de l'OMPI




WORLD INTELLECTUAL
PROPERTY ORGANIZATION

WIPO Arbitration and Mediation Center

LIST OF MEDIATORS AND ARBITRATORS

BIOGRAPHICAL DATA

David W. PLANT, Esq.
215 Little Lake Sunapee Road
New London, NH 03257
United States of America



Telephone: (1-603) 526 2653/2655 Facsimile: (1-603) 526 2654
E-mail: DPlantADR@aol.com

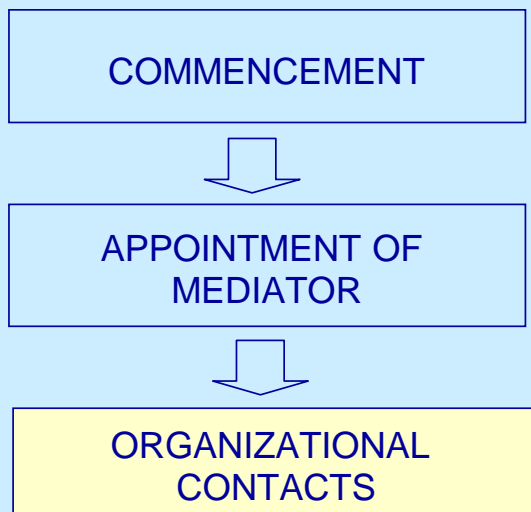
Date of Birth: April 22, 1931
Nationality: USA

EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Registered to practice before United States Patent & Trademark Office, 1982;
Licensed to practice in United States Supreme Court, 1968;
Licensed to practice law, N.Y. State Bar, 1957;
LLB, Cornell University, 1957;
BME, Cornell University, 1953.

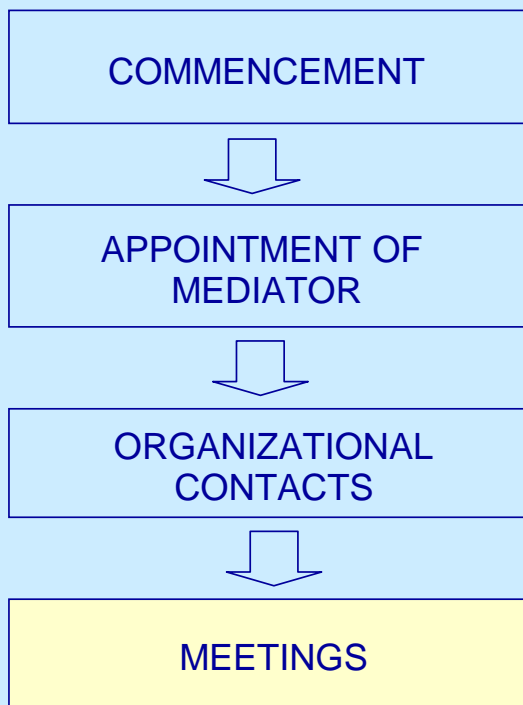
- | 1,000 experts
- | 100 nationalities
- | Broad range of ADR, IP, and technical backgrounds
- | Mediator's fees
 - ▶ Role of the WIPO Center

Preparation / Organizational Contacts



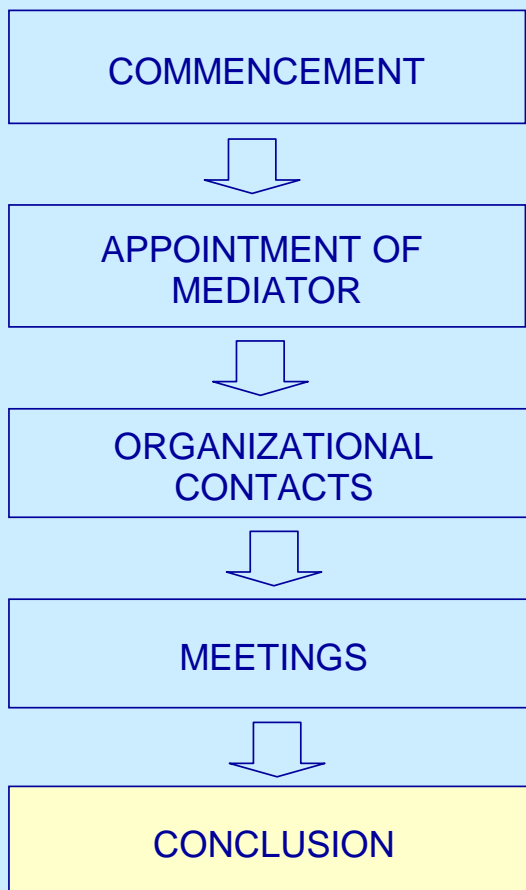
- | Preparation
- | Initial conference
 - ▶ Issues to be mediated
 - ▶ Participants
 - ▶ Submissions
 - ▶ Scheduling / logistics
 - F Role of the WIPO Center

Mediation Sessions



- | Party presentations
- | Objectives
 - ▶ Identify and accommodate *interests* of the parties
- | Tone
- | Format
 - ▶ Caucuses?
 - ▶ Impasses
 - ▶ Role of mediator

Conclusion of the Mediation



- Successful mediation
 - ▶ Settlement agreement – enforceable under contract law
- Unsuccessful mediation
 - ▶ Withdrawal by one or both parties after the first meeting
 - ▶ Decision of the mediator
 - ▶ Failure to pay fees /deposits

Mediation followed by Arbitration

Mediation

Arbitration

Expedited Arbitration

Available at

<http://arbitrator.wipo.int>

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [London]. The language to be used in the mediation shall be [English]"



If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators] [a sole arbitrator]. The place of arbitration shall be [London]. The language to be used in the arbitral proceedings shall be [English]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with [English] law."

Arbitration

- | Consensual
- | Efficient
- | Binding
- | No appeal

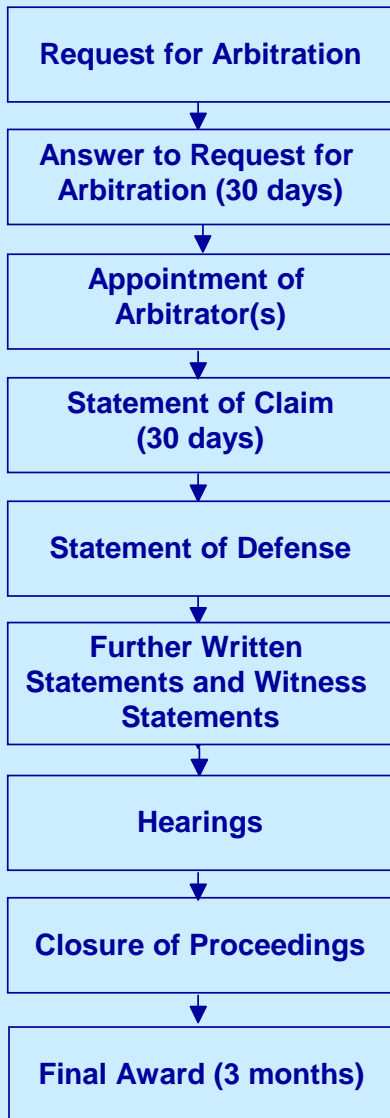
Place of arbitration (Art. 39 WIPO Arbitration Rules)

- | Arbitral law
- | Arbitrability
- | Elements to be considered
- | Venue of hearings

Laws applicable to the Arbitration (Art. 59)

- | Agreement to arbitrate
- | Substance of the dispute
- | Enforcement of the award

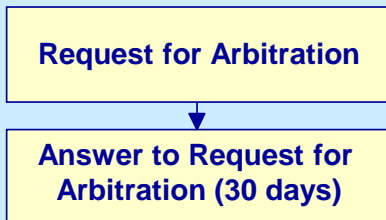
WIPO ARBITRATION



WIPO EXPEDITED ARBITRATION



Arbitration Proceedings



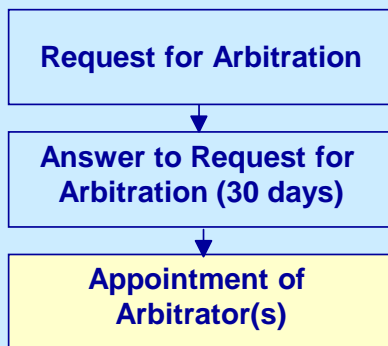
- | Testing the water
- | Interim measures
- | Registration and administration fees

Arbitration Proceedings Schedule of Fees

(All amounts are in United States dollars)

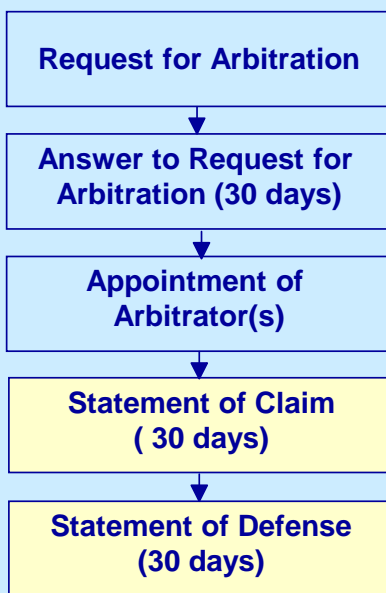
	Amount in dispute	Expedited Arbitration	Arbitration
Registration Fee	Any Amount	\$1,000	\$2,000
Administration Fee *	Up to \$2.5 M	\$1,000	\$2,000
	Over \$2.5 M and up to \$10 M	\$5,000	\$10,000
	Over \$10 M	\$ 5,000 +0.05% of amount over \$10 M up to a maximum fee of \$15,000	\$10,000 +0.05% of amount over \$10 M up to a maximum fee of \$25,000
Arbitrator(s) Fees *	Up to \$2.5 M	\$20,000 (fixed fee)	As agreed by the Center in consultation with the parties and the arbitrator(s) Indicative rate(s) \$ 300 to \$ 600 per hour
	Over \$2.5 M and up to \$10 M	\$40,000 (fixed fee)	
	Over \$10 M	As agreed by the Center in consultation with the parties and the arbitrator	

Arbitration Proceedings



- | Party control
- | WIPO List
- | Impartiality and independence
- | Default
- | Jurisdiction of the tribunal

Arbitration Proceedings



- | Further written statements
- | Preparatory conference

Arbitration Proceedings



- | Presentation of evidence
 - tribunal's control
 - admissibility, disclosure

- | Witnesses

- | Experiments

- | Primers and models

- | Experts

Arbitration Proceedings



- | Award
- | No appeal
- | Enforcement

Expedited Arbitration

- | When is it appropriate?
- | Statement of Claim filed with Request for Arbitration and Statement of Defense with Answer to the Request
- | Sole arbitrator
- | Fixed arbitrator's fees for disputes up to USD 10 million
- | Shorter hearings
- | Time limits shortened

The Role of the WIPO Arbitration and Mediation Center

- | Certainty
- | Efficient and cost-effective administration
- | List of Neutrals and institutional knowledge
- | Other resources

Information

- | <http://arbiter.wipo.int>
- | arbiter@wipo.int
- | ignacio.decastro@wipo.int
- | Mailing lists
 - ▶ <http://arbiter.wipo.int/subscribe/index.html>